

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, February 18, 2004, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Jon Carlson, Eugene Carroll, Gerry Krieser, Dan Marvin, Melinda Pearson, Mary Bills-Strand, Lynn Sunderman and Tommy Taylor (Roger Larson absent); Marvin Krout, Ray Hill, Steve Henrichsen, Brian Will, Tom Cajka, Greg Czaplewski, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Mary Bills-Strand called the meeting to order and requested a motion approving the minutes for the regular meeting held February 4, 2004. Motion for approval made by Carroll, seconded by Krieser and carried 8-0: Carlson, Carroll, Krieser, Marvin, Pearson, Bills-Strand, Sunderman and Taylor voting 'yes'; Larson absent.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION BEFORE PLANNING COMMISSION:

February 4, 2004

Members present: Carlson, Carroll, Krieser, Marvin, Pearson, Bills-Strand, Sunderman and Taylor; Larson absent.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 04004.**

Taylor moved to approve the Consent Agenda, seconded by Krieser and carried 8-0: Carlson, Carroll, Krieser, Marvin, Pearson, Bills-Strand, Sunderman and Taylor voting 'yes'; Larson absent.

CHANGE OF ZONE NO. 04001
TO AMEND CHAPTER 27.82 OF THE
LINCOLN MUNICIPAL CODE RELATING
TO ELIGIBILITY CRITERIA FOR LOW-INCOME
OWNER-OCCUPIED HOUSING EXEMPTIONS
FROM IMPACT FEES.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

February 18, 2004

Members present: Pearson, Krieser, Carroll, Sunderman, Carlson, Marvin, Taylor and Bills-Strand; Larson absent.

Staff recommendation: Approval.

Ex Parte Communications: Marvin reported that he spoke with Mr. Rauthaus of the Realtors Association of Lincoln regarding the median home price in Lincoln, which is \$122,000. He also visited with Steve Henrichsen in the Planning Department as to the fund used to refund impact fees. He found that the refunds come out of the general fund.

Proponents

1. **Steve Henrichsen** of Planning staff submitted a memo and revised language. It was pointed out by the Urban Development Department that the language needs to be consistent with that used by HUD and Urban Development. For example, "low income housing" has been clarified and changed to "low to moderate income housing". "Taxable income" has been changed to "adjusted gross income".

In general, Henrichsen advised that this proposed amendment is one that is consistent with the ordinance previously approved, which allowed the city to have a reimbursement for low and moderate income persons. This amendment sets up a system for processing those amendments because the city cannot rely on other agencies to provide the income data. The city will have to obtain that information on its own.

Marvin noted that in some places it refers to AGI (adjusted gross income), but then there is median income adjusted for household size. Are the two the same or different? Michaela Hansen of Public Works & Utilities explained that median income relates to the income limits established by HUD as far as qualification for low and moderate income. For 60% of median income, the reimbursement is 100%, for 80% of median income, the reimbursement is 50%. To determine what the individual's income is, you would look at their tax return and then apply that number to the HUD chart. Marvin then surmised that census data would be used to find the number locally. Hansen stated that the information is published by HUD once a year. It is indexed to the area income and to the purchasability of homes in the area. She offered to provide this information and how the information is updated.

Marvin noted that the Realtors Association states that the median home price in Lincoln is \$122,400 as of 2003. The information in the ordinance suggests that the median home price could go all the way up to \$160,000. Hansen suggested that we need to keep in mind that 1) they have to qualify for a loan at the bank before purchasing the home, and 2) if you have a family of two versus a family of eight, the size of the home you need and the dollars will vary. You have to use the scales of balance. They are going to have to qualify financially for the low to median income chart to qualify for the 60% or 80%. The \$160,176 number is from the US Dept. of Housing and Urban Development—that is the number used by the city and Neighborhoods, Inc. through block grant funding. NIFA has limits in targeted and outside targeted areas, but as of yesterday, NIFA has determined that it is going to transfer over to the HUD purchase price cap as well.

Carroll referred to page 7 of today's submittal and inquired whether "execution of the contract" refers to the closing date. Hansen explained that the purchase contract is when they go to the builder and sign an agreement with the builder. 10 days from the date of that signature is when they need to come to the city to make application for exemption. The application for impact fees is made at the time of building permit. That would be the point that triggers the impact fee. The individual is going to sign the contract with the builder and it is at that point when the new homeowner needs to come in and make application for the exemption reimbursement. The reimbursement of impact fees will be made at the time of closing. It will be used to reduce the mortgage and the fees paid at the closing.

Carlson recalled that the original proposal had referenced existing government programs or private programs as qualifiers. What is your expectation of the increase or decrease in applicants, and what is your analysis of the cost, since this will be a general fund reimbursement? Hansen explained that there is no benchmark to use as far as the low to moderate income individuals outside of using Urban Development and Neighborhoods, Inc. The home builders' expectations were pretty low, possibly 25-50 a year. Carlson wondered why the data is not accessible. Henrichsen explained that as the staff was making some of these estimates a year ago, it was difficult to determine the income of the individual purchasing the home or the number of people who might be in new construction, owner occupied. Habitat would be about the only organization serving people under 60% in the owner-occupied. Carlson thinks the \$160,000 will surprise people as the benchmark for low to moderate income housing. Henrichsen reiterated that the qualification is based on the income and not the price of the house. Carlson believes that the \$160,000 creates a pool that seems large. To what degree will it shrink the pool?

Bills-Strand does not think the \$160,000 will be applied. In real estate, when you bring in a buyer and are using Neighborhoods, Inc., they are going to try to hold them to 29% of their gross monthly income for that house payment, which includes taxes and insurance. The price range is usually \$80,000, \$90,000 or maybe the low \$100's. The relevance is the housing ratio that they have to go by to qualify for the loan. It is the entire household income.

Marvin asked whether the city has a budget estimate for these reimbursements. Hansen stated that a rough estimate would be around \$200,000 a year. Bills-Strand also pointed out that most of the homes sold in those programs are existing homes—not new construction. Impact fees only apply to new construction. Hansen advised that there have only been five that have qualified so far.

Carlson wants to make sure we are serving the target population.

Bills-Strand suggested that the desire to not tie the reimbursement to any kind of government loan program is because occasionally there might be an elderly couple that is selling a two-story home and needs a one-story home, and they would need the low income housing exemption.

There was no testimony in opposition.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

February 18, 2004

Carroll moved approval, with the revisions as submitted today, seconded by Sunderman, and carried 8-0: Pearson, Krieser, Carroll, Sunderman, Carlson, Marvin, Taylor and Bills-Strand voting 'yes'; Larson absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 04001

FOR A WIRELESS FACILITY

ON PROPERTY GENERALLY LOCATED

AT NO. 70TH STREET AND FLETCHER AVENUE.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

February 18, 2004

Members present: Pearson, Krieser, Carroll, Sunderman, Carlson, Marvin, Taylor and Bills-Strand; Larson absent.

Staff recommendation: Conditional Approval.

Ex Parte Communications: None.

Proponents

1. Doug Rogers, LCC International, 1023 Lincoln Mall Road, testified on behalf of the applicant. LCC International represents US Cellular, a new company moving into Lincoln to offer additional cellular services. US Cellular is building approximately 26 sites in the Lincoln area. On the original design, they call for 10-12 raw land sites. Having experience with

another project here, the applicant went back to look at different areas of how to redesign and have limited the number of new sites down to approximately six, one being in the county, 2 on private property and 3 on public property being proposed in the future.

With regard to the conditions of approval on this site, the applicant has no problem with moving the site to accommodate the fall zone. With regard to the landscape waiver, Brian Will of Planning staff explained that the staff will agree to approve the waiver only to the extent that the existing trees on site can be used as part of the screening. Otherwise the additional trees that are required need to be included as a part of this special permit.

Rogers stated that the applicant is not opposed to the landscaping, but believes that it may not be the most conducive place for the growth of new trees. There is extensive AG land to the east. There is also AG land to the north until it hits I-80. There is also AG land to the west. The site plan shows that along the south property line the trees sit on the adjacent property, but the applicant believes those trees do a good job of screening. The applicant agrees that if those trees are removed, they will install trees. This site is 540' back from 70th Street and there are mature trees along 70th Street. The land to the east and north is all AG. There is heavy construction equipment in and out of this area all the time. The ground is very hard and packed and the applicant believes that trees in this area will not be seen by any adjacent property or traffic going by. The applicant is still requesting waiver of the trees, but will comply if necessary.

There was no testimony in opposition.

Carlson asked staff to respond to the applicant's comments regarding the trees. Will stated that the staff recommendation is based upon the design standard for screening, which is generally considered a minimum standard. The applicant's point is that it is in an industrial area so there is no point in screening this use from adjacent uses. The staff takes the position that the screening proposed in the design standard is considered a minimum improvement and is generally a benefit to the community and should be met in all cases unless there is some hardship or other justification. Any existing trees on the site that can be used to accomplish the screening requirement are acceptable, but whatever trees are required to meet the standard should also be included in the landscaping. The design standard requires towers to be screened with deciduous and coniferous evergreen trees 70% up to 8' in height, with 50% of the trees growing to a mature height of 35'. The applicant believes there are some trees there that may help meet the requirement, but staff is not sure of that.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

February 18, 2004

Carlson moved approval of the staff recommendation of conditional approval, seconded by Carroll and carried 8-0: Pearson, Krieser, Carroll, Sunderman, Carlson, Marvin, Taylor and Bills-Strand voting 'yes'; Larson absent. This is a recommendation to the City Council.

WAIVER NO. 04002
TO WAIVE THE REQUIREMENT
TO DEDICATE THE REMAINDER OF THE STREET
ON PROPERTY GENERALLY LOCATED
AT 6TH STREET AND CALVERT STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

February 18, 2004

Members present: Pearson, Krieser, Carroll, Sunderman, Carlson, Marvin, Taylor and Bills-Strand; Larson absent.

Staff recommendation: Conditional Approval.

Ex Parte Communications: None.

Proponents

1. Bob Lewis of Hampton Development Services, 3801 Union Drive, appeared on behalf of the applicant and agreed with the staff recommendation and conditions of approval. He clarified that the intent of Condition #1 is to combine Outlot A with Lot 1, Block 1, to make a new Lot 1.

There was no testimony in opposition.

Carlson asked for staff to explain this application. Tom Cajka of Planning staff showed the map and referred to Outlot A, which is along Calvert Street west of S. 6th Street, and Lot 1. The desire is to combine Outlot A and Lot 1 into one buildable lot. The waiver is north of Outlot A, where there is 33' of dedicated right-of-way. The subdivision ordinance requires that the other one-half of the road should be dedicated. Everything west of this development has already been dedicated and Calvert Street does not lead to anything. The correct language in Condition #1 should be: Combine Outlot A with Lot 1, Block 1, into a single buildable lot.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

February 18, 2004

Carroll moved to approve the staff recommendation of conditional approval, with the change to Condition #1, seconded by Marvin and carried 8-0: Pearson, Krieser, Carroll, Sunderman, Carlson, Marvin, Taylor and Bills-Strand voting 'yes'; Larson absent.

Note: This is final action unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

CHANGE OF ZONE NO. 3413
FROM R-4 RESIDENTIAL TO R-2 RESIDENTIAL
ON PROPERTY GENERALLY LOCATED
AT 24TH & SUPERIOR STREET.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: February 18, 2004

Members present: Pearson, Krieser, Carroll, Sunderman, Carlson, Marvin, Taylor and Bills-Strand; Larson absent.

Staff recommendation: Denial.

Ex Parte Communications: None.

The Clerk announced that the applicant has made written request for additional deferral until May 26, 2004.

Proponents

1. **Carol Brown** appeared on behalf of the applicants and stated that the applicants continue to work with Mr. Fortney on a project that is acceptable to the neighborhood and that is why they have requested deferral to May 26, 2004.

There was no other testimony.

Marvin moved to defer, with continued public hearing and administrative action scheduled for May 26, 2004, seconded by Pearson and carried 8-0: Pearson, Krieser, Carroll, Sunderman, Carlson, Marvin, Taylor and Bills-Strand voting 'yes'; Larson absent.

CHANGE OF ZONE NO. 04003
TO AMEND TITLE 27 OF THE LINCOLN
MUNICIPAL CODE REGARDING SALE OF
ALCOHOL FOR CONSUMPTION ON AND
OFF THE PREMISES.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: February 18, 2004

Members present: Pearson, Krieser, Carroll, Sunderman, Carlson, Marvin, Taylor and Bills-Strand; Larson absent.

Staff recommendation: Approval.

Ex Parte Communications: Marvin indicated that he had talked with Kent Seacrest to clarify what Seacrest is proposing, which deals with the B-2 and B-5 Districts. They also discussed the measurement requirements and where we are right now.

The Clerk announced that the main motion, as amended, was tabled at the last meeting. The motion on the floor is approval, with the amendment to require 100' minimum distance from the public door when not facing protected uses, and 150' from the public door when facing protected uses.

Brian Will of planning staff submitted additional information, including additional letters submitted in support of the original proposal. In general, the letters are in support of the provision which would leave the measurement of the 100' to the premises from a residential district, versus the other changes discussed, i.e. measurement from the public front door.

Will also submitted a staff memorandum in response to questions raised by the Commission at the last meeting: 1) what would be the impact of the change in measurement as it relates to special permits for alcohol, and 2) other potential measures for mitigation should some sort of flexibility be retained in the special permit ordinance.

With regard to distance measurement, staff did go back and review the six most recent applications that were either controversial or did not meet the 100' separation distance from residential, and the table on page 2 of the memorandum goes through these six special permit applications. The distances relate to the three measurement techniques discussed—the existing ordinance, straight line from the public access doorway, and the doorway when measured along the face of the building. It is obvious that the most restrictive of the three is currently the way it is measured, i.e. the closest point of the licensed premises to a residential district. The most lenient would be measurement of the doorway as measured around the building face.

With regard to mitigation, there are six measures that could be considered for mitigation including increased landscaping and screening, limits on hours of operation, limits on advertising as it relates to sale of alcohol, limitation on the areas within the premises where alcohol is sold, and requiring additional employees to be on site to serve as security.

Will advised that the Planning staff recommendation remains the same--approval of the proposal as originally submitted.

Public Testimony

1. Larry Albers appeared on behalf of **Enterprise Company**, owner of a small neighborhood shopping center at the southeast corner of the intersection of 14th & Superior Streets. This is a 60,000 sq. ft. center built about 15 years ago. HyVee was the anchor tenant

at the time, which has now relocated to a larger box; however, HyVee continued to pay rent until last year. The owner is now in the process of looking for another tenant. The center is zoned B-2. There is residential behind the store, there is residential to the south and Goodrich Middle School is across the street to the west. Thus, the center is surrounded by residential, except for the Walgreens across the street to the north. The owner is still attempting to get a neighborhood grocery store. Grocery stores now want to be able to sell alcohol. Another tenant considered was a bowling alley, which would also want to serve alcohol. Part of the discussion was about the problems with the current ordinance in that if you drew the line through the center of the store, some of the bowling alleys would fall within the limit. The owner is looking at investing \$1.5 million, but finding a tenant for 35,000 sq. ft. is very difficult in that the whole concept of grocery stores has changed. Therefore, the owner is considering other alternative uses. One possibility is splitting the store area up, which gets to be expensive and would result in other uses that would potentially serve alcohol.

Albers believes it is for the benefit of the neighborhood to have the flexibility to bring in a grocery store or bowling alley. Since this store has been vacant, they have had problems with vandalism. Having a vacant store seriously affects the image of the shopping center. Albers requested that the Commission promote the requirement that the measurement be to the front door of the premises.

Albers had indicated that the owner has received requests from the neighborhood for a grocery store. Carlson asked how many requests there have been from the neighbors for alcohol sales. Albers response was that he believes the neighbors would generally go to a neighborhood store for convenience items. Osco Drug is located in the same neighborhood center and has off-sale alcohol. Albers acknowledged that the owner has not had any requests from the residential neighbors for alcohol sales or for a bowling alley.

2. Matt Ludwig, director of the **HyVee Store** at 48th & Leighton, referred to his previous testimony about the chances of a natural disaster and the ability to rebuild. After leaving the last meeting, he was thinking of some other instances where his location would be affected. About five years ago, HyVee Food Stores did a considerable expansion at the 48th & Leighton location. Under the proposed ordinance, the expanded store would no longer be able to sell alcohol. Likewise, looking to the future, HyVee holds the lease at a building that is adjacent to the 48th & Leighton store in the same strip mall. HyVee may consider a liquor store in that building that is connected to the HyVee Store. He would worry that the new ordinance would not allow that to occur.

3. Ed Caudill, North Bottoms, Neighborhood Association, requested that the Commission give consideration to the people that buy a house in the neighborhood and the people that rent and live in a neighborhood--they should be given as much consideration as the businesses. The North Bottoms Neighborhood Association supports the Mayor's original proposal, which removes the mitigation, so that everyone knows in advance that they may or

may not have a liquor store next to them. He also requested that the 100' measurement be retained as it is.

4. Mark Whitehead, Whitehead Oil, acknowledged that the convenience stores in residential areas are more intrusive than the old full-service stations. Whitehead Oil operates eight of those full-service stations and he would be surprised if anyone bought the majority of their gas from a non-24-hour or full-service location. Whitehead reiterated that limiting access to alcohol does not affect consumption of alcohol in any objective measure. Increased availability of alcohol also does not significantly contribute the problems with DWI's. Specifically, Whitehead would accept the alternatives proposed by Mr. Seacrest. When you measure straight line to the 100', it does eliminate convenience stores entirely from this process. It pits convenience stores against grocery stores. As a comparison, grocery stores are about 4 times larger in terms of land mass with 4 times more traffic and there are a lot more lights. Grocery stores now sell gas and are open 24 hours a day. So in terms of playing with the 100' or 150' walking or the 100' or 150' straight line, you are not really accomplishing anything. He would like the Commission to consider keeping the mitigation in place. He encouraged the Commission to consider the 100' "walking" distance. It will require a much larger convenience store, but it still allows at least a degree of alternatives in that process.

5. Jim Hardington, Executive Director of the Nebraska Restaurant Association, testified that without mitigation, it will preclude the opportunity for some smaller restaurants to set up facilities. The Restaurant Association supports measuring the distance from the front public access door around the building to the zoned area.

6. Bob Lewis testified on behalf of **Hampton Development**, developer of neighborhoods and neighborhood centers in opposition to any kind of ordinance that would eliminate tenants in a neighborhood center by restricting the distance requirement.

7. Kathy Siefken, Executive Director of the Nebraska Grocery Industry Association, testified that the Association is concerned about some of the unintended consequences that would result from this ordinance amendment. 95% of the grocery stores in Lincoln are members of the Association. The proposed ordinance would affect SaveMart, which is close to a residential district; Leon's, with a park directly east; and Village Market, with residential across the alley to the west, to name a few. These are small independent grocers having enough problems of survival as it is. The big stores are having trouble, too. For example, Super Saver at 27th and Pine Lake Road is 50' from the lot line; it will affect Russ's Market at Coddington; and Russ's in Havelock. Throughout the city of Lincoln there are existing stores concerned about the ability to rebuild or expand in case of fire, tornado, flood, etc. If they do rebuild, they will want to have alcohol sales in their facilities. In grocery stores, alcohol sales are a huge profit center. Siefken stated that the members of the Association are very responsible retailers. Through the state association, they are involved in a project where they do stings in member stores once a month, and for two years they have been at 90%

compliance. In some instances they have identified the clerks that are doing a bad job and they are no longer working in those locations. It appears that this ordinance is going to cause some unintended consequences. The back of the grocery store buildings are built for the very specific purpose to have semi-trucks pull up and unload product. They do not need an additional 100' in back of the stores. It will cause sprawl, and they do not want kids playing in that area.

Carlson suggested that what Ms. Siefken is calling “wasted space”, some people might call a buffer space. Siefken stated that in some instances she would agree; however, there are big semi-trucks that go behind these buildings. She thinks there is a safety issue that needs to be considered. Super Saver at Pine Lake Road gets 20 trucks each day. Carlson thinks it would be safer to have residential farther away. Siefken believes this would result in a bigger area for the children to play in. Semi's and kids don't mix. The docks in the back of the store are required for the semi's to be able to turn around.

8. Mark Hunzeker appeared on behalf of a number of his clients that are in the development business in new and old areas of the city. Clearly the point has been made that the B-2 and B-5 in newer parts of the city have problems as well as the older parts of the community, but there seems to have been a focus on the smaller convenience stores and stand-alone business. The impact of this proposed language and the elimination of any possibility of mitigation will have an impact on all of the old town centers in this community – Havelock, University Place, College View, Bethany, Belmont, those areas down along South Street– any of the areas where we have old town center type commercial. Most of those areas are zoned less than one block deep, so if you have a commercial structure which faces 48th Street in University Place or 48th Street in College View, chances are very high that across the alley on the other side of the block there is residential zoning. How are you going to get restaurants, coffee shops and neighborhood bars to continue to locate and invest in those areas if there is no possibility for them to exist? Those are desirable uses in those areas and this language will prohibit any new investment of that type. Whether you grandfather them or not, there are things that may result in those permits going away and the reinvestment will be impossible under this new language. Hunzeker urged that the discretion that goes with the mitigation is part of being a public official. The Planning Commission has the opportunity to make judgments about individual cases in special permits, as well as the City Council. He believes it is part of the responsibility that goes with these positions.

9. Carol Brown, 2201 Elba Circle, pointed out that alcohol is not a treatment for blight; it is not an economic development tool; it is available everywhere in the community, on every corner; if a convenience store cannot survive without alcohol, should it become a liquor store? We need to go to the Police Department and ask for statistics on convenience stores selling alcohol within such a short distance of neighborhoods. She believes that there are some alarming statistics as far as crime. Are we going to be shoving more of this crime into the neighborhoods? There is a mitigation fence on 48th & Randolph. A car hit it, bent the poles,

and busted the fence. That property owner has his house up for sale. Do we want to drive these people out of these neighborhoods? There is a party house at 48th & Hwy 2. Why do we want to tempt the kids to even do worse in this neighborhood? They have already had assault calls in that neighborhood. This ordinance seeks some protection for neighborhoods for a nice, quiet living environment. She lives by Osco Drug and the old HyVee Store. Why do we need alcohol sales next door to each other? What are we doing to our kids? Fast Break at the entrance of North Star High School has cases of alcohol on sale. Our kids go into these places every day. We are conditioning them to think that this is okay. Somebody save us from this. Let's find out how many accidents are related to alcohol in our community.

10. Greg McCown, 1970 B Street, testified on his own behalf and as President of the **Near South Neighborhood Association**, in support of the Mayor's proposal. One of Lincoln's greatest strengths is that it is built on historic old neighborhoods, which unfortunately, are not given the same respect as some of the newer urban areas today. You don't see alcohol being built right next to residential in the newer Pine Lake Road area. It appears that we are not giving the same parameters in the older neighborhoods. He wants to see that trend reversed.

11. Fred Freytag, testified on behalf of the **Witherbee Neighborhood**, in support of removing the mitigation and staying with the 100' measurement from the licensed premises. Witherbee has several areas vulnerable to development of convenience stores, and having the mitigation removed would make it clear to the purchaser as to whether they will be able to have liquor sales or not. It will protect the neighborhoods and not put them on the defensive every time someone wants to develop a property. The fence at 48th & Randolph has not been repaired. How many of you would like to have the bright lights of the station in the back of your home? Do we need to have bright daylight 24 hours a day? If the convenience stores say they need alcohol to survive, maybe there are already too many of them. A lot of these stores are within walking distances to schools. We spend a lot of money educating our young people to stay away from drugs and alcohol and then we put it right in front of them. We need to look at the message we give them and the examples we show them. It is not the grocery stores in the larger commercial areas that are the problem, but the stores on the corner that are invading the neighborhoods where there used to be gas stations.

12. Dave Shoemaker, **Shoemaker's Truck Station**, urged the Commission to measure the distance to the front doorway around the building as this might affect his business in the future. "If I don't have alcohol and someone else does close by, I am going to lose a lot of business." He is concerned about the remodeling. He is fearful that businesses will not maintain and improve their buildings if they risk the loss of alcohol sales by doing so.

13. Kent Seacrest testified on behalf of **Ridge Development Company** and submitted proposed amendments which reflect the amendment passed by the Commission at the last meeting. He suggested that measuring from the door is the most logical thing to do. The

issue is bathroom treatment (puking, urinating and parking distance to the car), which all comes from the public front door—not from the back of the building. Other states have allowed and supported measuring from the door.

Seacrest believes there is some confusion about the walking distance. He agrees that we do not want to use the pure standard of walking distance. What he has presented today measures around the building, at the base of the building. Courts have allowed walking around the building or measurement from the building.

The ordinance proposed by the administration would not have allowed the Valentino's at 48th & Hwy 2. It had the convenience door and the pizza door, but inside they were connected. Seacrest's proposed amendments provide that both doors allow you to walk out with beer. Therefore, you would be measuring from both doors.

Seacrest pointed out that the staff memorandum submitted today suggests that the grandfathering is really tricky. The staff does not even have a recommendation on the grandfathering provision. It is important for the businesses to be able to rebuild in the case of a catastrophic event. The grandfathering is very important.

There is also confusion about where the zoning line starts or stops. Some of us think it is in the middle of the road. The City Attorney opines that roads are not zoned, but Seacrest does not believe that is clear in the ordinance. He believes the zoning should not include the road.

As far as distinguishing the B-2 and B-5 zones from the rest, Seacrest indicated that he would be glad to file the application. These zones are use permit zones and those uses are allowed. Special permit zones are for those uses that are not allowed without all the conditions and protections. He believes it is rational to distinguish and he would be glad to file the application.

One of Seacrest's proposed amendments does distinguish between grocery stores and restaurants. He believes there is a difference between a convenience store and a grocery store. He believes there is a difference between a bar and a restaurant. It would be rational to say grocery stores and restaurants should be 100' and the other uses 150'.

Carlson stated that he hopes and anticipates that the Commission will be doing some further work in the near future to define what is meant by mixed use, what kind of uses we want and what standards will have to apply. The existing code makes it difficult to be specific about those uses that we want. He asked Seacrest whether he anticipates there being further ordinance changes that will call out these anticipated better uses? Seacrest suggested that we need to have a similar vision for the "downtownish" area--those zones deserve mixed use and they deserve alcohol in controlled ways. He believes we need a better mixed use zone

than what we have. The B-1 and B-3 are broken. He is not sure this does it. He is afraid it will be difficult to get any rehabilitation going in those areas with the proposed ordinance. If we are not careful, we are going to make it so they don't get rehabilitated. On the other hand, we don't want to make it so easy. Seacrest would encourage a balance. People do want these services, yet the neighborhood does deserve protection. He believes that a restaurant does not create the neighborhood problems that a noisy bar does. There are definitions that can be drafted.

Bills-Strand asked Seacrest what he would like to see recommended today, or whether he would like an opportunity to come back and get some options and alternatives. Seacrest believes that is the Commission's decision. He believes it is grey and he thinks there are versions to draft that are more sophisticated than the simple model. Measuring from the building just doesn't ring a bell with him. We need to at least get the framework right and then debate the number. Right now, we're doing it backwards. He would like to submit something tomorrow, but he needs more guidance from the Commission.

Marvin suggested that if the Commission votes to do something today that adversely impacts the B-2 and B-5, something could be drafted to correct it. Seacrest suggested that if the Commission thinks that is a good strategy, he would prefer that the Commission wait for the B-2 and B-5 language before voting on this proposal, and that would also give staff time to get the grandfathering on the special permit zones cleaned up. Then the whole package can be taken forward in a more comprehensive way.

Staff questions

Carroll asked staff to address the pre-existing uses. Brian Will stated that they can be treated either as a pre-existing special permit or a nonconforming use. Staff has not had time to review this in depth and in any detail to render an opinion of whether those uses would be pre-existing special permits or nonconforming uses. Staff would need more time to answer this issue.

As far as definitions of grocery store, convenience store, allowable use and different measurements, Carroll inquired whether staff has done any research or reviewed other cities. Will stated that such an analysis was done originally when the ordinance was adopted, and they have had those discussions over time.

Carlson confirmed that the staff recommendation remains the same. Will stated that the original proposal as presented in the staff report is still the staff recommendation.

With regard to grandfathering and the ability to rebuild, Carlson understands that if we have a tornado, you would not lose your grandfathering in your special permit, and you would be able to petition to rebuild by special permit. Rick Peo of the City Law Department stated that

the existing ordinance provides that a nonconforming use has the right to rebuild if there is less than 50% damage by storm. If there is more than 50% damage or if they want to enlarge, they have the right to request a special permit. We have to remember that that is the existing law today and a lot of the liquor and grocery stores were established prior to adopting the 100' rule in the first place. They were nonconforming at that time. By waiving that now without mitigation, we are going to make some additional ones nonconforming that were granted mitigation. They still have the same safeguards of the potential of a special permit and have the ability to reconstruct. How to give them more security is an issue we are looking at from a broader sense beyond the alcohol sales. We felt that we couldn't rush forward with a quick fix for this particular situation and not have ramifications that we hadn't considered for other uses, so we decided to step back and evaluate that and come forward in the future. Carlson reiterated that the existing mechanism is still there. Peo agreed that there are some safeguards, but it is not a pure guarantee.

Bills-Strand clarified that if the liquor special permits are final action by the Planning Commission, there is always the right to appeal to the City Council. Peo concurred.

If the ordinance is passed as proposed, Carroll inquired whether there is an opportunity to go back and make further changes once we have studied the pre-existing uses. Peo stated that to be something that could be done to try to separate out alcohol sales based on the use they are associated with, whether it be convenience store, or restaurant or some other mixed use category. Peo believes that there is a need to be able to define the impact of each of those particular uses and how alcohol sales relate differently to them than some of the others. We always have to bear in mind that there is split jurisdiction on alcohol. We cannot use land use to prohibit alcohol sales. That is where the state has license authority. We have had case law that limits our zoning jurisdiction. There is a balancing need here and we need to step slowly and tie what we are doing to land use and not to the license of alcohol.

With regard to the B-2 and B-5, Peo stated that we still have to look at the uses that are near. He will attempt to look at that issue.

Carlson suggested that if you change the special permit language in the B-2 and B-5, there still appears to be the waiver option. Peo concurred. Carlson suggested then that the action today may not necessarily have the same impact on B-2 and B-5--they may enjoy their existing options. Peo agreed that to be one interpretation of the language when it was adopted--to give them full protection of the special permit provisions.

Peo explained that the Administration's position is that there was a desire to get away from mitigation and we felt there were not adequate mitigation standards other than separation. Therefore, the proposal was to come forward with a mandatory 100' separation without the ability to be waived. The Commission's recommendation to the City Council is whether or not that is appropriate.

Peo also advised the Commission that there is a motion on the floor upon which the Commission needs to act. The Commission can move to rescind or repeal the prior amendments to the main motion. It would be best to act upon the main motion, and vote it up or down and then start over. If the Commission is not comfortable with the language, additional amendments can be offered, or any of the amendments previously approved can be rescinded.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

February 18, 2004

Taylor moved to rescind the amendment regarding the 100' and 150' measurement from the front door, seconded by Carlson.

Carlson commented that the Commission now has additional information that shows that while we were working to try to find a compromise, what was passed actually weakens the existing ordinance and he does not believe that was what the Commission intended to do.

Marvin will vote to rescind the amendment based upon what he has thought about in the last two weeks and the conversations he has had. We can deal with some of these things separately – we don't have to settle everything all at once. We can go ahead with the Mayor's original proposal and then make further changes.

Taylor understands the concerns of the small business people. He understands that we have businesses that need to operate and he likes the idea of mitigation because this gives the neighbors an opportunity to come forward and determine what they want or do not want in their neighborhood. He does not think that we solve the problem by doing a carte blanche type of behavior. We must allow for a certain amount of personal accountability. He believes these permits must be reviewed on a case-by-case basis. Therefore, he does not believe this ordinance is going in the right direction.

Carroll explained that his intent with the 100' and 150' direct measurement from the front door is to protect the neighborhood, but there should also be consideration to neighborhood grocery stores and restaurants that are improvements to neighborhoods and pre-existing conditions. There have been a lot of questions raised since the last meeting, leaving a lot of problems that the 100' does not address. He would prefer to look at all of those changes. He will support removing the amendment of 100' because there are too many questions to be answered.

Bills-Strand commented that she feels like we have the "cart before the horse" and it's kind of a "half-baked idea". She would prefer to see this delayed six or eight weeks and think it through before passing it on. We do need to protect business owners and the neighborhoods, and we need to look at both sides of the issue.

Motion to rescind the amendment providing for the measurement to be 100' and 150' from the front public door carried 7-1: Pearson, Krieser, Carroll, Sunderman, Carlson, Marvin and Taylor voting 'yes'; Bills-Strand voting 'no'; Larson absent.

Discussion on main motion for approval. Carroll believes the good part is getting rid of mitigation. The bad part is that it does not help the existing uses. It paints everything with a wide brush, but it has more good than bad. He believes that we will have to go back and

revisit this again because it does not satisfy all of the things that need to be taken care of. There are too many problems that are going to be happening because of this proposal. But, it has more good because it removes mitigation. We will need to revisit this.

Carlson believes it is appropriate to make the rules clearer and cleaner. He does not believe it is too high of a standard – he supports the ongoing discussions and he thinks there are going to be elements that apply to the broader city as well. What we get now is uses that create a lot of conflict and nuisance and they have negative impacts on surrounding neighborhoods, and we can do something about that with this change. He believes this is a good change that will provide neighborhoods with protection. We have setback standards in the code now, and he does not believe it is too much to ask to have a 100' buffer for selling liquor next to someone's house.

Pearson agrees that we need to eliminate mitigation. It should be clear cut. If we can't write it clear cut, then we're probably not doing our jobs. She agrees that we need to give neighborhoods protection. She does not believe the 100' protects the neighborhoods. What we want to protect is the front door where the people are coming and going. That's what the struggle is. Why don't we talk about what will protect the neighborhoods the best? She still thinks it's the front door—not the edge of the building. She does not think that we've thought it through, so "more good than bad" does not sound like a good idea to her at this time. She thinks we should do more good and she is going to encourage deferring this because we have elements of something that is going to work, i.e. get rid of mitigation, measure to the front door, and look at the difference between restaurants and grocery stores and the bulk of everything else that sells alcohol.

Taylor questions what we are going to accomplish with this ordinance. He questions whether we are improving upon the situation that existed prior to bringing forward these changes. Therefore, he would like to see something more beneficial to the neighbors, but also not detrimental to specifically the grocery outlets and the small, local operators. So many businesses have been put out because of the big box operations. We need to work harder to find something that will be better and make a substantial effective change.

Bills-Strand agrees with Pearson and she would support delaying this so that we can get something that protects both sides.

Motion for approval failed 2-6: Carlson and Marvin voting 'yes'; Pearson, Krieser, Carroll, Sunderman, Taylor and Bills-Strand voting 'no'; Larson absent.

Taylor moved to defer six weeks, seconded by Krieser.

Peo approached the Commission, stating that deferrals are difficult to justify if the applicant wants the application to go forward. You cannot hold the government hostage by not having something go forward to be acted upon. A short deferral is acceptable to work out some of the details, but it appears that we are attempting to negotiate the administration's proposal. Or we need an applicant to come forward and propose a different change of zone. This type of deferral puts pressure on staff to try to come up with something that is not what they've been asked to do by the administration. The administration (the applicant) has not at this time indicated agreement to defer or to make revisions. The Commission's duty is to make a recommendation to the next body for a decision. Sometimes it is better to recommend denial and suggest that the Council send it back for further revision.

Peo does not know what is considered a "reasonable length of time" that the Commission can defer. Staff is recommending the Mayor's proposal. No one else has made application for a different alternative. Bills-Strand noted, however, that there is someone willing to come forward with an application tomorrow.

Marvin Krout, Director of Planning, believes that Mr. Peo is saying that the Commission owes the Mayor the same courtesy that the Commission might provide to an applicant in this case, and we don't have any impression that the Mayor has at this point indicated an interest in some kind of compromised proposal. The pre-existing issue is something the Mayor is probably willing to consider, but that needs further research and time because there are other implications. We are in a very awkward position with this mitigation requirement where the Planning Director makes a decision but sends it on to the Planning Commission and City Council. He is not even sure that the front door is the answer because we see many cases with convenience stores siding to residential neighborhoods with the parking immediately adjacent to the residential property and the impact isn't just someone who walks out the front door. The point that the Mayor is trying to make is that we are in an awkward position and we need to shift the burden of proof for any future amendments. While there may be an interest in pursuing some sort of elimination of the need to obtain a special permit if rebuilding, Krout does not believe anyone who has applied for that special permit to rebuild a nonconforming use has been denied. He thinks there is sympathy with those situation but there is no guarantee. He believes the Mayor would be concerned about due process in terms of further delays on this application.

Peo reiterated that the Planning Commission needs to recognize their duty to make a recommendation on the proposal before them. It is inappropriate to defer for any length of time to try to mandate the applicant to amend their application. If you don't like what is going to happen with this text change, you recommend denial. Krout suggested that sending this on with a recommendation of denial would be a real incentive to some people in the audience to draft a set of amendments that would make the City Council send it back to the Planning Commission.

Carlson believes the Commission should approve the proposal. He would prefer to take action since the applicant has not indicated the willingness to make any changes.

Carroll does not think a delay for six weeks is going to do anything.

Taylor withdrew the motion to defer, and the withdrawal was accepted by Krieser, who had seconded the motion.

Taylor moved to deny, seconded by Sunderman and carried 6-2: Pearson, Krieser, Carroll, Sunderman, Taylor and Bills-Strand voting 'yes'; Carlson and Marvin voting 'no'; Larson absent. This is a recommendation to the City Council.

*** Break ***

CHANGE OF ZONE NO. 3421
FROM H-3 HIGHWAY COMMERCIAL TO R-3 RESIDENTIAL;
SPECIAL PERMIT NO. 1928A,
AMENDMENT TO THE OAK CREEK APARTMENTS COMMUNITY UNIT PLAN;
and
PRELIMINARY PLAT NO. 03011,
OUTFIELD PARK,
ON PROPERTY GENERALLY LOCATED AT
N. 1ST STREET & W. CHARLESTON STREET.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: February 18, 2004

Members present: Pearson, Krieser, Carroll, Sunderman, Carlson, Marvin, Taylor and Bills-Strand; Larson absent.

Staff recommendation: Approval of the change of zone, and conditional approval of the amendment to the community unit plan and the preliminary plat.

Ex Parte Communications: All of the Commissioners indicated they had been contacted by the applicant in the past two weeks.

Greg Czaplewski of Planning staff submitted additional information for the record including an email from Ed Caudill on behalf of the North Bottoms Neighborhood Association, disclosing correspondence that he has had with the applicant.

Czaplewski also submitted revised conditions of approval as a result of the work that the staff and the developer have done in the last two weeks. Some of the conditions were moved from being required prior to City Council scheduling to before building permit so that they occur later in the process, as requested by the applicant. Czaplewski also made additional changes to Condition #1.1.11, changing the lot numbers and adding: "The first 1200', as measured from the centerline of Sun Valley Boulevard, may be constructed in phases as buildable lots are platted. At such time as the final plat is approved requiring this roadway to exceed 1200', the remainder of the roadway will be constructed to meet design standards." Czaplewski reported that the conditions, as amended, should be agreeable to the city and the applicant.

Proponents

1. Ron Ross of Ross Engineering testified on behalf of **Chameleon & Co.**, the owner of the overall property, and the **Dinerstein Companies**, the developer of the student housing project. City staff has rewritten the conditions of approval for both the special permit and the preliminary plat, and the applicant and developer are in agreement with all of those conditions of approval.

Ross acknowledged that the student housing is sandwiched between 7.5 acres of commercial on the north and 25 acres on the south. The reason for this is the landfill. The Dinerstein Companies cannot buy any land with landfill.

With regard to the issue of development within the floodplain, Ross advised that they are trucking zero dirt into the project, as was done in phase one. In phase two, they are obtaining 100% of this material from their own property, so they are not trucking any dirt into the area. The 86,000 cubic yards of compacted fill is being generated within their own property. They have also agreed with future regulations regarding the floodplain, i.e. compensatory storage. The developer has voluntarily agreed to provide a one-to-one storage exchange for flood control. That is not a current land subdivision requirement.

Ross further advised that Chameleon & Co. currently has a NPDES permit and floodplain permits for the north 1/3 and south 1/3. They have not yet submitted the middle 1/3 but they are prepared to do so. When the applicant had the permits approved, they showed a grading plan filling the entire property. They know that is not what the city is recommending in the future, so the developer has agreed to revise the fill permit to show the proposed grading as part of this plat. It reduces the amount of fill and provides less trucked-in material in the future when that area is developed.

With regard to the wetlands buffer, Ross stated that the developer has agreed to provide the 25' wide buffer around the existing wetlands by eliminating some parking stalls and they have resubmitted a site plan accordingly.

In further regard to the student housing being sandwiched between commercial, Ross explained that the site plan is based on landfill issues and wetlands. At the last meeting, some of the Commissioners were concerned about the through movement of traffic from the south to the future commercial area, starting at Sun Valley Blvd. The developer has agreed with Public Works to widen that to 33' to a point at which there will be a future access road, once Sun Valley Blvd. is relocated, to provide an entrance to the remaining city property that is currently the car tow lot. After that, the roadway narrows to 27' as it goes through the student housing. The service commercial area has been revised such that the private roadway does not have a direct vehicular connection that runs north and south all the way through the property. There is a jog to the east. The result is now a service center buffered by a 50' greenbelt, loaded with trees and drainage way. The service center is buffered from the student housing. Ross requested that the Commission add a condition that adopts the new site plan. Planning staff and Public Works are in agreement with this plan. Ross pointed out that Condition #1.1.14 on the community unit plan states that the street alignment system must be approved by Public Works, and Dennis Bartels has indicated that they do support this revised plan.

Ross reiterated that the applicant and developer are in agreement with all conditions of approval on both the special permit and the preliminary plat as submitted by the staff today. The grading that will be done in Outfield Park is substantially less than what the developer could do today.

Ross believes that the developer has addressed the concerns raised by Ed Caudill on behalf of the North Bottoms Neighborhood Association. The applicant has withdrawn the waiver of detention. They are requesting sidewalks only on one side of the long private roadway. The waiver of landscaping only applies to the property adjacent to the railroad, which was also done in phase one.

Marvin inquired about the developer's offer to the neighborhood to pay \$10,000 to finance a police substation. Ross stated that that was done with the neighborhood many months ago; however, he did not know the timeframe for payment. Craig Dickerson of Sterling Housing, acknowledged that they did agree to make a one-time contribution for a substation, but it was agreed that the contribution was not to be a condition of approval for the project.

2. Craig Dickerson, Sterling Housing, expressed appreciation to the North Bottoms Neighborhood Association, the Planning Director and City staff. This project has required significant discussion and review. He believes this is a good area for this project and a good project for the community. He respectfully requested the Commission's support.

3. Adam Bruning(sp), student at UNL, testified in support. He has lived at the Sterling University apartments for 10 months. Some of the amenities that have brought him to this community are the shuttle bus to and from school; weight room; pool table; and the use of a computer for anyone who does not have one.

4. Elizabeth Dodson, student at UNL, and resident at Sterling since August, testified in support. She enjoys the environment. As a college student, there are a lot of things they have to offer that she could not find anywhere else. The "SUH cares program" helps the residents get to know each other; they have a roommate matching program which is excellent; expanding and adding more apartments will give other students the same opportunity.

5. Matt Weyman(sp), who has lived at Sterling University since August, testified in support. They provide on-site maintenance; a friendly staff; and provide a one person-one bedroom lease in case someone leaves. It is a great place.

6. Ed Caudill, testified on behalf of the **North Bottoms Neighborhood Association** in support. He testified over two years ago before this body fighting a salvage lot going on the corner of N.W. 1st and Cornhusker right across from Oak Lake. However, North Bottoms is still in support of this project. They believe there is a buffer between the neighborhood and this area. It is an improvement around Oak Lake. The neighborhood does still have concerns about traffic, and the new street aligning with the entrance to the ball park is a concern to the neighborhood. Caudill believes the floodplain issue has been satisfied.

There was no testimony in opposition.

Pearson inquired whether the access to the city tow lot is in place. Czaplewski showed the access on the map. The existing access to the tow lot and BMX bike track will be retained. Pearson wondered what will happen if Sun Valley is realigned. Czaplewski did not know how the access would be relocated once the state project is done. Referring to the map, Czaplewski pointed out the entrance to the apartments, and that is where it will be after Sun Valley is realigned. Gus Ponstingl of Ross Engineering also explained the access at the map. They do not know what will happen with the tow lot. The owner of the property to the west and south of the tow lot is Chameleon and they have granted an easement to the city for access.

Pearson sought confirmation that there is no net rise in the floodplain. Czaplewski stated that there is a condition on the community unit plan requiring compensatory storage to replace lost floodplain storage, and they will do that at a one-to-one ratio. Devin Biesecker of Public Works explained that the Salt Creek floodplain is very complicated. Public Works had thought about having the developer show no net rise, but you can get very close to no net rise with compensatory storage, and without doing modeling, compensatory storage is the next best

thing. They are offsetting fill in the floodplain with an excavated portion of fill. Without doing the modeling, he could not say whether it is "no net rise", but it does meet all of the city's existing requirements.

Pearson inquired as to who would have to provide the modeling. Biesecker stated that the city usually asks the developer to do the modeling. Pearson inquired further as to what Biesecker means when he says that "compensatory storage is close to no net rise". Biesecker stated that in the new draft floodplain standards for new growth areas, it is being proposed that development use compensatory storage, and they can do this without doing modeling if the storage mimics the original functions of the floodplain.

CHANGE OF ZONE NO. 3421

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

February 18, 2004

Taylor moved approval, seconded by Marvin and carried 7-1: Pearson, Krieser, Carroll, Sunderman, Marvin, Taylor and Bills-Strand voting 'yes'; Carlson voting 'no'; Larson absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 1928A

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

February 18, 2004

Taylor moved to approve the staff recommendation of conditional approval, with the revisions submitted today, seconded by Marvin and carried 6-2: Krieser, Carroll, Sunderman, Marvin, Taylor and Bills-Strand voting 'yes'; Pearson and Carlson voting 'no'; Larson absent. This is a recommendation to the City Council.

PRELIMINARY PLAT NO. 03011, OUTFIELD PARK

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

February 18, 2004

Carroll moved to approve the applicant's revised submittal, with the revised conditions of approval as submitted by the staff today, seconded by Marvin and carried 6-2: Krieser, Carroll, Sunderman, Marvin, Taylor and Bills-Strand voting 'yes'; Pearson and Carlson voting 'no'; Larson absent. This is a recommendation to the City Council.

There being no further business, the meeting was adjourned at 4:00 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on March 3, 2004.